United States Court of Appeals

for the Second Circuit

APPELLANT'S BRIEF & APPENDIX

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76-2001

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

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CHARLES JONES-BEY, :

Appellant, :

- against - : Docket No. 76-2001

RALPH CASO, et al., :

Appellees. :

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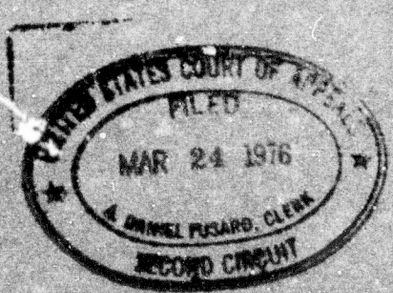
BRIEF FOR APPELLANT AND APPENDIX

Appeal From An Order of Dismissal
Entered in the United States District
Court for the Eastern District
of New York



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UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

- - - - - - - - - - - - - - - - - - - -x

CHARLES JONES-BEY, :

Appellant, :

-against- :

RALPH G. CASO, County Executive of Nassau County, :
MICHAEL P. SENIUK, Sheriff of Nassau County, : No. 76-2001
SAUL A JACKSON, Commissioner of Corrections of Nassau County, and :
WALTER FLOOD, Warden of Nassau County Jail, :

Appellees. :

- - - - - - - - - - - - - - - - - - - -x

QUESTION PRESENTED

Whether a consent decree that settled an inmate class action over conditions at the Nassau County Jail--a suit brought, certified and settled only for injunctive and declaratory relief--precludes, in the absence of an express provision to that effect, a pending suit for damages brought by a putative class member over many of the same conditions?

INTRODUCTORY STATEMENT

Charles Jones-Bey appeals from a judgment of the United States District Court for the Eastern District of New York (Judd, J.) entered on July 17, 1975 dismissing his pro se complaint. Appellant's suit was brought under 42 U.S.C. §1983 for money damages as well as declaratory and injunctive relief as a result of conditions at the Nassau County Jail. The District Court held that appellant's complaint was "moot" as a result of the consent

agreement settling the related action in Palma v. Treuchtlinger. On December 12, 1975, this Court granted appellant's motion for leave to proceed on appeal in forma pauperis, and on January 6, 1976 the undersigned was appointed to represent the appellant.

STATEMENT OF FACTS

Appellant Charles Jones-Bey instituted this civil rights action under 42 U.S.C. §1983 on February 4, 1975. At the time, he was a pre-trial detainee at the Nassau County Jail. In his pro se complaint, appellant alleged generally that the living conditions, the treatment of prisoners and in particular the enforcement of certain rules and regulations in the institution constituted cruel and unusual punishment as well as a denial of equal protection and due process of law (R. 1). He requested money damages in addition to declaratory and injunctive relief (R. 1). Jones-Bey's complaint was assigned (apparently under the "related case" rule) to Judge Orrin Judd, before whom was pending the class action entitled Palma v. Treuchtlinger, No. 72 C. 1653.

The complaint in Palma, filed on December 8, 1972, alleged some of the same constitutional violations at the Nassau County Jail of which appellant complained, namely, delayed medical care, lack of recreation and restrictive visiting and mail privileges. However, the Palma complaint

requested only injunctive and declaratory relief. (A copy of it is annexed as Appendix A). On March 20, 1973, Palma had been certified as a Rule 23(b)(2) class action on behalf of all pre-trial detainees in the Nassau County Jail. (A copy of this order is annexed as Appendix B.) Accordingly, the District Court had ordered that notice be given by placing a written copy of the notice in each cell of the Nassau County Jail occupied by a pre-trial detainee. (A copy of the notice is annexed as Appendix C). The District Court's order also required that the notices remain posted in each cell during the pendency of the action and that any member of the plaintiff class who so desired should request to intervene; in the absence of such a request for intervention, the notice specified, the interests of the members of the plaintiff class would be deemed to be represented by the named plaintiffs.

Jones-Bey entered the Nassau County Jail on January 22, 1974, or about ten months after the order to post a notice in each cell was issued (R.1). However, there was no notice posted in his cell when he arrived, and it is alleged in his motion for assignment of counsel in this Court that he and numerous other detainees at the Nassau County Jail never received notice of the pending class action in Palma. (A copy of his motion papers is annexed as Appendix D).

On February 6, 1975, approximately a year after he arrived at the jail, he filed the complaint in this case. His complaint was similar to the Palma complaint as to certain allegations and part of the relief requested. However, appellant's complaint alleged additional violations (e.g., denial of the right to wear his own clothes, and inhuman procedures for transporting inmates to and from courts). He also requested further and different relief from the Palma class, specifically, money damages in addition to injunctive and declaratory relief (R. 1).

Appellant's case was assigned to Judge Judd, and apparently nothing further happened in it before May 17, 1975, when Jones-Bey was transferred from Nassau County Jail to a state correctional facility. A few weeks after Jones-Bey's transfer, a notice of a proposed consent judgment in Palma was sent to those pre-trial detainees at the Nassau County Jail on June 6, 1975. It stated that a hearing on the proposed order of settlement would be held in District Court on July 11, 1975 and that any member of the plaintiff class who did not intervene to express his views would be deemed represented by the named plaintiffs. (A copy of this notice is annexed as Appendix E.) Jones-Bey, who had left the Nassau County Jail a few weeks before June 6, never received this or any other notice of the proposed consent agreement. Consequently, he had no

opportunity to object to the terms of the settlement.

The negotiated settlement agreement in Palma was approved and signed as a consent judgment by the District Court on July 11, 1975. (A copy of the consent judgment is annexed as Appendix F.) The judgment did not purport to bar--indeed, it did not even mention--any damage claims that members of the class might have. However, in a memorandum approving the Palma settlement, the Court stated that it "disposed of the issues in ... Jones-Bey v. Caso..." (A copy of the memorandum is annexed as Appendix G.) By order dated July 17, 1975, Jones-Bey's present action was dismissed as "moot" (R. 4).

ARGUMENT

POINT I

APPELLANT WAS IMPROPERLY CONSIDERED PART OF THE PLAINTIFF CLASS AND THUS SHOULD NOT HAVE BEEN PRECLUDED BY THE PALMA SETTLEMENT FROM LITIGATING HIS OWN DAMAGE CLAIMS.

A. The representatives of the plaintiff class in Palma never purported to represent detainees with damage claims.

The complaint in Palma v. Treuchtlinger, and the class representatives who filed it, sought declaratory and injunctive relief only (App. A at 10). Certainly one of the strongest pieces of evidence that the representatives of the class in Palma did not view themselves as entrusted with all potential claims for damages is the manner in which they chose to proceed as a class action. They asked to be certi-

fied only as a (b)(2, not a (b)(3) class. Consequently, the class in Palma was certified only pursuant to Fed.R. Civ.P. 23(b)(2) on the finding that "the party opposing the class has acted or refused to act on grounds generally applicable to the class, thereby making appropriate final injunctive relief or corresponding declaratory relief with respect to the class as a whole" (emphasis supplied). Appellant's counsel's conversations with one of the attorneys for the plaintiff class in Palma established that the latter purported to represent class members only as to injunctive and declaratory relief affecting the class as a whole, because it was their organization's policy not to handle money damage claims. See page 15, post.

Had the Palma plaintiffs sought to represent class members having damage claims, personal notice to each identifiable member with such claims--including former detainees--was plainly required. Eisen v. Carlisle and Jacquelin, 417 U.S. 156, 176 (1974). Such notice of course was not sent, either when the class was certified or when settlement was proposed. Each of the notices was sent only to members of the class then residing at Nassau County Jail, and no mention of money damage claims was made at any time. This affords cogent evidence that the class representatives never intended to represent class members with damage claims.*

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*For the same reason, even if there had been such an intention, notice was not given to the entire class of potential plaintiffs (for example, the people no longer at the institution who might have had damage claims not barred by the statute of limitations), and thus under Eisen their damage claims could still not have been barred. See Point II section B.

B. The Palma consent judgment did not bar individual damage claims because nothing in the order purports to do so.

Although the parties to the Palma class action reached a contractual agreement on correction of conditions at the Nassau County Jail, this agreement did not--either by its express terms, or by necessary implication, or by operation of law (e.g., the mootness notion articulated by the District Court)--dispose of appellant's claim for damages. Perhaps most importantly, there is nothing in the terms of the consent judgment in Palma that purports to compromise or to waive any individual's arguable damage claims. This alone should resolve the issue.

Similarly, the parties could not be said to have rendered appellant's claim moot by entering into this contractual agreement. In Jenkins v. United Gas Corp., 400 F.2d 23 (5th Cir. 1968), a black employee of the corporate defendants instituted a class suit to enjoin alleged civil rights violations in denying him and other black employees promotions because of their race. The District Court dismissed plaintiff's case as moot by reason of plaintiff's acceptance, subsequent to the filing of the class action, of an offer of promotion by defendant. The Court of Appeals reversed, holding that the acceptance did not render the suit moot as to him or to the class he represented. The court said that "voluntary cessation of allegedly illegal conduct does not deprive the tribunal of power

to hear and determine the case, i.e., does not make the case moot." Id. at 33, n.11. See also, Cypress v. Newport News General & Nonsectarian Hosp. Ass'n, 375 F.2d 648, 657-8 (4th Cir. 1967); Heumann v. Board of Education, 320 F.Supp. 623, 624-5 (S.D.N.Y. 1970). Action to correct prospectively the conditions that allegedly infringed on appellant's constitutional rights obviously could not compensate him for damages he might have suffered as a result of those conditions.

POINT II

BY DISMISSING APPELLANT'S CLAIM AS MOOT, ERRONEOUSLY TREATING HIS CLAIMS AS COTERMINOUS WITH THOSE OF THE CLASS, THE DISTRICT COURT DENIED HIM HIS DUE PROCESS RIGHT TO BE HEARD.

The District Court had discretion on how and when to hear appellant's claims. What the District Court did not have is discretion as to whether to hear these claims. The fundamental requisite of due process of law is the right to be heard, Mullane v. Central Hanover Bank and Trust Co., 339 U.S. 306, 314 (1950); Goldberg v. Kelly, 397 U.S. 254 (1970), and the fact that there was a pending class action involving similar events and conditions did not preclude maintenance of appellant's suit.

A. The resolution of the Palma action did not render this case moot.

In Clayton v. Jones, 463 F.2d 1182 (5th Cir. 1972), plaintiff, an inmate of a county jail, filed a complaint

alleging denial of constitutionally adequate hearings leading to and substandard conditions within solitary confinement. Plaintiff sought a mandatory injunction as well as exemplary and punitive damages. The District Court dismissed the action on the ground that another class action attacking substandard conditions in the jail was pending in the same court. The Court of Appeals reversed, holding that plaintiff's allegation of constitutionally inadequate in-prison hearings presented a claim for relief distinct from those in the other class action which was not subsumed within the class action.

Here, likewise, appellant's claims, though overlapping those of the Palma plaintiffs to some extent, had additional dimensions involving different proof and different remedies. See Johnson v. Goodyear Tire & Rubber Co., 491 F.2d 1364 (5th Cir. 1974). Thus, when the District Court held after the fact that the Palma suit incorporated appellant's as well, it was ruling not simply that some settled issues could not be relitigated but rather that other unsettled issues could not be litigated at all. This decision deprived appellant of his basic due process right to be heard.

The irregular and untenable nature of the District Court's holding may be illustrated by analogy to another area of the law where class action litigation involving

large, shifting classes and frequent mixing of monetary and equitable relief are common: Rule 10b-5 securities fraud litigation. One can hypothesize a situation where a disenchanted shareholder brings a class action only to enjoin continuing material misrepresentations by management, and notice of the class action is sent only to current shareholders. Subsequently, several shareholders file individual actions for damages based on claims arising out of the same facts. Two and a half years after the filing of the class suit, a settlement offer is made to discontinue it in return for a cessation of the alleged misrepresentations. (Astute corporate counsel recommends acceptance of the settlement for its preclusive effect, presumably.) Notice of the proposed settlement is sent only to those who are then currently shareholders (and some of the plaintiffs in the individual damage suits have since sold their shares); only they are given an opportunity to object. The District Court approves the settlement and then, without further hearing, dismisses all pending (and presumably subsequent) damage claims on the ground that they are "moot" or barred by the consent agreement--even though the agreement itself says no such thing, and even though many of those with colorable damage claims never received notice of the compromising of their claims. Clearly such a result would be unthinkable, yet it is indistinguishable from what happened in this case.

B. The consent judgment in Palma could not have barred individual damage claims because proper notice was never sent to those having such claims.

It is a fundamental requisite of due process that each party in interest have the opportunity to be heard. Mullane, supra. Appellant did not receive notice of the proposed consent judgment in Palma and thus had no opportunity to object to the contemplated settlement. After the parties in Palma had reached a tentative settlement, notice of their proposed agreement was sent only to pre-trial detainees then at the institution. Because appellant had departed the previous month, he did not receive the notice. No attempt was made, either by the representatives of the class or by the District Court, to ensure that appellant receive actual notice--even though he had filed a related, separate proceeding and his damage claims would later be viewed as foreclosed by the consent judgment. He did not in fact receive any notice.

In Mullane, the respondent established a common trust fund composed of 113 trusts. It petitioned the Surrogate's Court for settlement of its first account as common trustee. The only notice provided to persons interested in the fund was by publication, in strict compliance with the applicable Banking Law. Appellant, the special guardian appointed for persons known or unknown and not otherwise appearing who might have any interest in the

income of the fund, objected to the notice as inadequate under the Fourteenth Amendment. The Supreme Court agreed, stating that "the right to be heard has little reality or worth unless one is informed that the matter is pending and can choose for himself whether to appear or default, acquiesce or contest." 339 U.S. at 314. The Court ordered that parties who could be found and whose addresses were known must be sent individual notice of the pending proceedings. See also, Eisen v. Carlisle & Jacquelin, supra.

Thus, in order to be precluded from further pressing his damage claims appellant would have to have received, at minimum, personal notice of the proposed settlement. Although appellant had departed from the facility before the notice was sent, he could have been located with minimum effort. The Court below noted, in certifying the class in Palma, that "the plaintiffs represent an ever changing class of detainees..." (App. B, at 12). Thus, all parties were aware of the possibility that individual claimants such as Jones-Bey might not receive the notice if it were sent only to the Nassau County Jail. Appellant's claims were known to the lower court as well as to the designated class representatives. Therefore, he should not have been deprived of the constitutionally required notice merely because of his transfer from one facility to another within the same system.

By dismissing Jones-Bey's claim as moot in light of Palma, the District Court in essence held that it would bar all damage claims arising out of the treatment and conditions that existed at the Nassau County Jail before or at the time of the filing of the Palma complaint. However, to effect such a result, the type of notice that was given--only to the then current residents of the institution--was clearly inadequate. It could not reasonably be said to have afforded individuals with accrued damage claims, such as appellant, the opportunity to be heard. As a result, their damage claims could not properly be barred.

C. The representatives of the class could not have adequately represented appellant as to his damage claims since their interests differed from his.

Members of a class who are not present as parties to the litigation cannot be bound by the judgment unless they are in fact adequately represented by parties who are present. Gonzales v. Cassidy, 474 F.2d 671 (5th Cir. 1973). Due process is lacking where the procedure adopted does not fairly insure the protection of the interests of absent parties who are to be bound by the subsequent judgment. Hansberry v. Lee, 311 U.S. 32, 42 (1940).

Here, the representatives of the plaintiff class had interests that were substantially different from appellant's. The class representatives were seeking only prospective equitable relief, whereas appellant sought in addition the remedy of money damages for past wrongs. Since presumably the latter would be more difficult to obtain than the former, the appellant's goals were in no sense

coterminous with those of the class. Thus, appellant could not be assured of furtherance of his claims by his inclusion among those represented by the class designee in Palma.

This is therefore an appropriate instance to recall the basic notion that "where relief sought by particular plaintiffs who bring suit cannot be thought to be what would be desired by other members of the class, it would be inequitable to recognize /named/ plaintiffs as representative, and a violation of due process to permit them to obtain a judgment binding absent plaintiffs." Dierks v. Thompson, 414 F.2d 453, 456 (1st Cir. 1969). In essence, that is what the District Court did nunc pro tunc here in dismissing as "moot" appellant's damage claims after a class-wide settlement on prospective injunctive and declaratory grounds. It was a violation of appellant's due process rights to treat the class representatives as having been his representatives in those matters where his interests and claims always were separate and distinct from those of the class. As the Court said in Hansberry v. Lee, "such a selection of representatives for purposes of litigation, whose substantial interests are not necessarily or even probably the same as those whom they are deemed to represent, does not afford that protection to absent parties that due process requires." 311 U.S. at 45.

The inadequacy of representation for appellant was not only inherent in the situation but was also borne out by the actual facts. Some time after Jones-Bey's complaint was filed, one of the attorneys who was handling the Palma case for the plaintiffs at the Nassau County Legal Aid Society reviewed Jones-Bey's complaint and ascertained that money damages were involved. He then determined--apparently without ever so informing appellant or the court--that he could not handle Jones-Bey's case because of Legal Aid's policy against representing persons who have potentially fee-generating damage lawsuits. Thus, the built-in divergence of interests between Jones-Bey and the class in Palma (which of itself is sufficient to preclude adequacy of representation) in fact became a demonstrable inadequacy--indeed, a total lack--of representation for Jones-Bey.

D. The District Court had ample procedural means for preserving appellant's right to be heard without necessitating repetitive relitigation of the issues resolved in Palma.

The District Court was never confronted with the time-consuming prospect of retrying the Palma issues for appellant and every other damage claimant. Under subdivision (c)(4)(A) of Rule 23, which permits a class action to be brought "with respect to particular issues," the Court had the authority to confine the class action aspects of the case to those issues pertaining to declaratory and

injunctive relief and to allow damage issues to be tried subsequently or separately. See Wright and Miller, 7A Federal Practice and Procedure: Civil §1775 (1973); Blackie v. Barrack, 524 F.2d 891 (9th Cir. 1975); Nix v. Grand Lodge of Int'l Ass'n of Machine & Aero Workers, 479 F.2d 382 (5th Cir. 1973). This procedure has been employed where the primary relief sought was injunctive and/or declaratory but individual damages were also sought. In Paddison v. Fidelity Bank, 60 F.R.D. 695 (E.D. Pa. 1973), for example, the District Court ordered a bifurcated trial in an action dealing with sex discrimination, brought for injunctive relief and back pay for the class. The court ruled that the case should first proceed as a class action for injunctive relief under (b)(2) before a determination would be made as to whether the case should be certified for relief for monetary damages. 60 F.R.D. at 698-99. Accord: Almenares v. Wyman, 334 F.Supp. 512 (S.D.N.Y.), modified, 453 F.2d 1075 (2d Cir. 1971), cert. denied, 405 U.S. 944 (1972). See also, Leisner v. N.Y. Telephone Co., 358 F.Supp. 359 (S.D.N.Y. 1973), holding that under Rule 23(c)(4) and 23(d), a federal court has the discretion to sever claims for individual relief from those for general injunctive relief. Accord: Bing v. Roadway Express, Inc., 485 F.2d 441 (5th Cir. 1973); Ellison v. Rock Hill Printing & Finishing Co., 64 F.R.D. 415 (D.S.C.

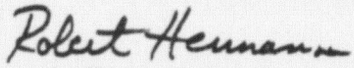
1974); Rhodes v. Weinberger, 388 F.Supp. 437 (E.D.Pa. 1975); Eley v. Morris, 390 F.Supp. 913 (N.D.Va. 1975). The basis for these decisions is an appreciation of the flexibility of the class action device and the importnace of utilizing Rule 23(b)(2) in civil rights cases.

Here, similarly, it would have been appropriate for the District Court first to determine on a class-wide basis whether the actions of the defendants were violative of constitutional or civil rights, and then, if necessary, to determine how to handle individual claims of liability (e.g., by reference to a master for individualized findings of fact). The District Court, in short, had the flexibility to resolve or defer Jones-Bey's damage claims. It had no authority, however, for dismissing these non-class claims summarily or merging them with others merely because there was a settlement in a related case. To have done so was inescapably to violate the due process rights of the individual to be heard--by denying the complainant his day in court--and that is precisely what happened here.

CONCLUSION

For the foregoing reasons, the judgment below should be reversed and the case remanded to the District Court with instructions to reinstate the complaint.

Respectfully submitted,



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March 24, 1976

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UNITED STATES DISTRICT COURT FOR

THE EASTERN DISTRICT OF NEW YORK

- -x

DOMINICK PALMA, ROBERT DUFF, EDWARD BURKE, HENRY BRITT and LAMAR WILLIAMS, individually and on behalf of all other persons similarly situated,

Plaintiffs,

- vs -

JAMES TREUCHTLINGER, Commissioner of Corrections for the County of Nassau and WALTER J. FLOOD, Warden, Nassau County Jail, individually and in their official capacities,

Defendants

JUDD, J.

72C 1653

FILED
IN CLERK'S OFFICE
DISTRICT COURT E.D. N.Y.
DEC 8 - 1972
TIME A.M.

- -x

COMPLAINT - CLASS ACTION

I.

1. This is a class action brought pursuant to Title 42 USC §1983 and Title 28 USC §2201 on behalf of all persons incarcerated in the Nassau County Jail for injunctive and declaratory relief to redress the deprivation, under color of County law, of their rights under the First, Fifth, Sixth, Eighth and Fourteenth Amendments to the United States Constitution by officials of the County of Nassau who are responsible for the cruel, unusual, uncivilized and unlawful conditions under which said prisoners are confined in the Nassau County Jail or who have the power, heretofore unexercised, to alleviate these conditions.

2. Jurisdiction is conferred on this Court by 28 USC §§1343 and 2201.

(1)

II.

CLASS ACTION ALLEGATIONS

3. This is a class action brought pursuant to Federal Rule of Civil Procedure 23(b)(1)(A) and (B), (2) and (3).

4. The class consists of over 300 members, and is so numerous that joinder of all members is impracticable.

5. The class is composed of all persons incarcerated in the Nassau County Jail.

6. The named plaintiffs are each detained in the Nassau County Jail; the conditions of which they complain apply equally to all members of the class and the relief which they seek is equally applicable to all members of the class; therefore plaintiffs will fairly and adequately protect the interests of the class.

7. All questions of law and fact set forth in this complaint are common to the class.

8. Prosecution of separate actions by individual members of the class would create a risk of (a) inconsistent or varying adjudications with respect to individual members of the class which would establish incompatible standards of conduct for defendants, and (b) adjudications with respect to individual members of the class which would as a practical matter be dispositive of the interests of the other members not parties to the adjudication or substantially impede their ability to protect their interests.

9. Defendants have acted or refused to act on grounds generally applicable to the class, thereby making appropriate final injunctive relief or corresponding declaratory relief with respect to the class as a whole.

10. The questions of law and fact common to the class predominate over any questions affecting only individual members, and a class action is superior to other available methods for a fair and efficient adjudication of the controversy. Since a majority of the members of the class are indigent, suits by individual members would most likely be brought pro se, with all the attendant difficulties of such litigation; any pro se applications already brought by members of the class can properly be consolidated with this action. Since there is no conflict among the interests of the members of the class, the members have no interest in individually controlling the prosecution and defense of separate actions. This Court is a desirable forum in which to concentrate the litigation of the claims of the class, since it has the power to hear all the claims and to grant appropriate relief. There are not likely to be any difficulties in the management of a class action, since the whereabouts of all members of the Class is known, and all members can easily be informed of this action.

III.

11. Plaintiffs are all adult citizens of the United States who are presently incarcerated in the Nassau County Jail, Carman Avenue, East Meadow, New York.

12. DOMINICK PALMA was arrested on October 4, 1972 and is being held in the Nassau County Jail in lieu of $2,500 bail on charges of rape in the Second Degree.

13. ROBERT DUFF was arrested on July 25, 1972 and is being held in the Nassau County Jail without bail on a charge of Violation of Parole.

14. EDWARD BURKE was arrested on July 25, 1972, and is being held in lieu of $500.00 bail on a charge of Criminal Possession of a Dangerous Drug in the Fourth Degree and Possession of a Dangerous Weapon.

15. HENRY BRITT was arrested on August 8, 1972, and is being held in the Nassau County Jail in lieu of $1,000.00 bail on charges of Possession of a Dangerous Weapon, Possession of Burglar's Tools and Conspiracy in the Second Degree.

16. LAMAR WILLIAMS was arrested on July 23, 1972, and is being held in the Nassau County Jail in lieu of $2,500.00 bail on a charge of Possession of a Weapon.

17. Defendants are adult citizens and residents of the State of New York and are sued individually and in their capacities as officials of the County of Nassau and the State of New York who are responsible for the administration of the Nassau County Jail and the care and custody of its inmates or who have the power to alleviate conditions there but have not exercised that power.

18. Defendant JAMES TREUCHTLINGER has been Commissioner of Correction of the County of Nassau since 1971; his office and post office address is the Nassau County Jail, Carman Avenue, East Meadow, New York.

19. Defendant WALTER FLOOD has been Warden of the Nassau County Jail since 1970; prior to that he was Commissioner of Correction of Nassau County from 1968 to 1970. From 1965 to 1968 he was Warden of the Nassau County Jail.

IV.

20. The conditions under which plaintiffs and the class they represent are incarcerated are oppressive, unsanitary, unhealthy, and degrading. The conditions are an affront to basic human decency and a violation of fundamental constitutional

rights of the plaintiffs and the class they represent.

21. Guards and Discipline:

a. Many guards at the Nassau County Jail are brutal to inmates. There have been several incidents involving physical beatings to detainees. Additionally, there are instances of guards taking and destroying pro-se applications for relief made to a court of law by pre-trial detainees.

b. Some guards show favoritism to certain prisoners, arbitrarily granting privileges to favored prisoners and denying them to others. [e.g., telehpone calls (see paragraph # 24) and sick call visits (see paragraph # 22), etc.].

c. Guards summarily, arbitrarily, and capriciously administer unauthorized disciplinary measures to prisoners, Inmates are not provided with a written copy of the charges against them, are not granted a hearing before a disinterested official, cannot examine their accusers or call witnesses on their own behalf, cannot be represented by counsel or a counsel subistitute, and do not receive a written decision by hearing officer stating the factual and legal basis for the disciplinary measures.

d. Inmates are generally punished by being placed in 24 hour lock-up where an inmate is locked in a cell, twenty-four hours a day and are precluded from participiting in all recreational activities. Twenty-four lock-up may last for weeks or months, and may be imposed for trivial causes or without any just cause. For example, a detainee who refuses to cut his hair or shave his beard is automatically deemed by the jail authorities to be a "discipline"problem and is placed on the special twenty-four hour lock-up tier. Any inmate who has a newspaper in his cell is automatically placed in twenty-four lock-up.

c. The result of these harsh and arbitrary disciplinary procedures is to increase the atmosphere of brutality and fear and to make worse the misery and degredation of those detainees subject to such discipline.

22. Inadequate Medical Care:

a. Detainees at the Nassau County Jail are often denied access to physicians when they are sick.

b. It takes upto a week and sometimes longer to see a medical doctor, there are inadequate provisions for treatment of special medical problems.

c. When detainee-immates finally see a doctor it takes upoto three days to get the prescribed medication.

23. Lack of Recreation:

a. Detainee-inmates at the Nassau County Jail receive virtually no physical exercise; At most, an inmate can go into the yard three times a week for a maximum period of one hour; often a large portion of the one-hour maximum period is erased due to transfer time from tier to yard. Inmates can play handball or basketball or do nothing as there is not enough space for everyone to participate.

b. The only recreation available to inmates is movies once a week, television once every four days for two-three hours, a radio on the tier controlled by guards, and games such as checkers, chess, cards, which can be played on the tier.

c. The Nassau County Jail library is inadequate. No inmates are allowed into the library unless special permission is obtained (which often involves begging a security guard); the inmates only access to library materials is a small cart left in the yard during recreation time upon which is a number of books

There are no law books on the cart so inmates are effectively deprived access to any law books whatsoever in their cells. If an inmate wants to purchase a book he must do so directly from the publisher. Prisoners cannot receive magazines or newspaper subscriptions of any kind. The presence of a newspaper in an inmates cell is automatically grounds for twenty-four lock-up.

d. The result of these restrictions is that prisoners must spend months in the Nassau County Jail without adequate physical exercise, in idleness and boredom, conditions which inevitably lead to discipline problems and to psychological and even physical problems.

24. Visiting and Mail Privileges:

a. The Nassau County Jail letters may be written to and received from the approved list of correspondents. This list is comprised of two names selected upon admission to the institution or at some later date. Before an inmate can obtain permission to write letters and receive mail, the inmate must sign an order authorizing the Warden or his agent to open and read his outgoing and incoming mail and authorizing the Warden to withold any mail he deems proper. The prison rules provide further that an inmate cannot write about institutional matters or other inmates; they must confine their correspondence to their own personal matters. Additionally, all letters,must be written on regulation writing paper which the inmates must purchase.

b. The only possible visitors of inmates are the same two persons named on the correspondence list. Inmates with good conduct records may receive visits once a week from the list. All visiting privileges can be suspended because of poor conduct.

All visits, with the exception of counsel visits are totally without privacy and are limited, and varied in duration.

c. Except upon arrival, detainees are not permitted to make telephone calls. In order to obtain a telephone call, inmates must request and often beg guards. The requests are infrequently granted and are wholly at the whim of the officer.

d. The result of these restrictions is that these detainees,in the Nassau County Jail only because they cannot afford bail, are almost totally cut off from the world; they are held virtually incommunicable for months, and are greatly hindered in the preparation of their cases for trial.

25. Many members of plaintiffs class spend months in the Nassau County Jail under the conditions described above, due to their inability to make bail and due to delays in the disposition of their cases. The conditions described above violate the fundamental constitutional rights and human dignity of all inmates in the Nassau County Jail, and are particularly shocking and uncivilized for the prolonged detention of the plaintiff's class, none of whom have been found guilty of any crime.

26. The conditions described above have been known or should have been known by defendants. Nevertheless, no significant steps have been taken to relieve the oppression incurred by these innocent men.

VI

27. The conditions described above violate the rights of plaintiffs and the class they represent under the First, Fifth, Sixth, Eighth and Fourteenth Amendments to the United States Constitution.

28. The unsanitary and unhygienic conditions, lack of delayed medical care, lack of recreation, restrictive visiting and mail privileges, brutal and inadequate guard services, and punitive and unlawful discipline, are so extreme as to constitute cruel and unusual punishment in violation of the rights of plaintiffs and the class they represent under the Eighth and Fourteenth Amendments.

29. The arbitrary, capricious and unlawful summary discipline administered by the guards at the Nassau County Jail deprives plaintiffs and the class they represent of due process of law in violation of their rights under the Fifth and Fourteenth Amendments.

30. The conditions described above, being far worse than those to which these untried detainees who can afford to make bail are subjected, are in violation of the rights of plaintiffs and the class they represent under the equal protection clause of the Fourteenth Amendment.

31. The conditions described above are severely punitive in nature and effectively punish plaintiffs and the class they represent all of whom are detained prior to trial before they have been convicted of any crimes, or given any sentence, depriving them of life and liberty without due process of law, and contravening the presumption that they are innocent until proven guilty, in violation of their rights under the Fifth and Fourteenth Amendments.

32. The conditions described above relating to lack of access to the library and to law books, and the restrictions on visiting and mailing privileges, deprive plaintiffs and the class they represent of effective assistance of counsel, and the

ability to assist in the preparation of a defense and to secure witnesses in their behalf, in violation of their rights under the Sixth and Fourteenth Amendments.

33. The censorship of all mail deprives plaintiffs and the class they represent of their rights under the First and Fourteenth Amendments.

34. No effective administrative remedies are available to the plaintiffs; the conditions which they protest have been brought to the attention of the defendants, affording defendants ample oppprtunity to institute improvements in these conditions, but defendants have failed to do so.

35. Plaintiffs have no plain, adequate, or complete remedy at la to redress these wrongs; plaintiffs and the class they represent will continue to suffer irreparable harm from the conditions set forth above unless and until the declaratory and injunctive relief sought herein is granted by this Court.

WHEREFORE, plaintiffs pray that this Court:

I. Adjudge and declare that the conditions above described are in violation of the rights of plaintiffs and the class they represent under the Constitution and laws of the United States, and

II. Enjoin defendants from allowing said conditions to continue, and

III. Enjoin and order defendants to submit a plan to this Court within thirty days stating the means by which they intend permanently to correct the illegal and unconstitutional conditions described above, and

IV. Retain jurisdiction over this cause until this Court is satisfied that the plans to correct the conditions complained of are, and will continue to be, implemented by the defendants, and

V. Grant such other and further relief as to this Court may seem just and proper.

Yours, etc.,

James J. McDonough
Attorney in Charge
Harvey B. Levinson
Matthew Muraskin
Victor M. Ort
Lawrence J. Zinn
Legal Aid Society of Nassau County, N.Y.
Criminal Division
Nassau County Court House
Mineola, New York

by Victor M. Ort
Victor M. Ort

by Lawrence J. Zinn
Lawrence J. Zinn

Counsel for Plaintiffs

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

- -x

DOMINICK PALMA, ROBERT DUFF, EDWARD BURKE, HENRY BRITT and LAMAR WILLIAMS, individually and on behalf of all other persons similarly situated,

Plaintiffs,

- against -

JAMES TREUCHTLINGER, Commissioner of Corrections for the County of Nassau and WALTER J. FLOOD, Warden, Nassau County Jail, individually and in their official capacities,

Defendants.

- -x

72 C 1653

NOTICE OF SETTLEMENT OF ORDER

PLEASE TAKE NOTICE that the attached order will be presented for settlement at the office of the Clerk of the United States District Court for the Eastern District of New York, at the United States Courthouse, 225 Cadman Plaza East, Brooklyn, New York, on the 19th day of March, 1973, at 10 o'clock in the forenoon.

DATED: Mineola, New York
March 14, 1973

Yours, etc.,

JAMES J. MC DONOUGH
Attorney in Charge
Attorney for Plaintiffs
Legal Aid Society of
Nassau County, New York
Criminal Division
County Court House
Mineola, New York
(516) 248-5977

TO: HON. JOSEPH JASPAN
County Attorney of Nassau County
Executive Building
1 West Street
Mineola, New York

UNITED STATE DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

- -x

DOMINICK PALMA, ROBERT DUFF, EDWARD BURKE, HENRY BRITT and LAMAR WILLIAMS, individually and on behalf of all other persons similarly situated,

Plaintiffs : 72 C 1653

- against - : O R D E R

JAMES TREUCHTLINGER, Commissioner of Corrections for the County of Nassau and WALTER J. FLOOD, Warden, Nassau County Jail, individually and in their official capacities,

Defendants :

- -x

Plaintiffs having moved this Court for permission to maintain this suit as a class action and for an order directing that all members of the class be notified of this action; and this Court having found that this action satisfies the requirements of Rules 23 (a), 23 (b) (1) and 23 (b) (2) of the Federal Rules of Civil Procedure, and having determined that notice of the pendency of this action must be given to all members of the class; it is hereby

ORDERED, that this action shall be maintained as a class action pursuant to Rule 23 (b) (2) of the Federal Rules of Civil Procedure; and it is further

ORDERED, that the members of the class are all persons incarcerated in the Nassau County Jail awaiting trial, and it is further

ORDERED, that notice shall be given to each pretrial detainee incarcerated in the Nassau County Jail during the pendency of this action by placing a written copy of the following notice in each cell occupied by a detainee:

UNITED STATE DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

DOMINICK PALMA, ROBERT DUFF, EDWARD BURKE, HENRY BRITT and LAMAR WILLIAMS, individually and on behalf of all other persons similarly situated,	:	
Plaintiffs,	:	72 C 1653
- against -	:	
JAMES TREUCHTLINGER, Commissioner of Corrections for the County of Nassau and WALTER J. FLOOD, Warden Nassau County Jail, individually and in their official capacities	:	
Defendants	:	

NOTICE TO ALL PERSONS CONFINED
IN THE NASSAU COUNTY JAIL

The United States District Court has determined that this action is brought on behalf of all persons incarcerated in the Nassau County Jail.

The complaint charges that pretrial detainees at the Nassau County Jail have been deprived of their rights under the First, Fifth, Sixth, Eighth, and Fourteenth Amendments of the United States Constitution, because of unsanitary conditions, mistreatment by guards, arbitrary disciplinary procedures, inadequate medical care, lack of recreation, and restrictive visiting, mail and telephone privileges.

The suit seeks a permanent injunction against continuance of these conditions.

The Court has not determined whether or not the charges are true or whether or not the plaintiffs are entitled to any relief.

The decision ultimately rendered in this action will bind all inmates of the Nassau County Jail.

Plaintiffs are represented by James J. McDonough of the Legal Aid Society of Nassau County, New York, 262 Old Country Road, Mineola, New York, Victor M. Ort and Lawrence J. Zinn, of counsel.

Any member of the class who so desires may apply to the Court to intervene in this action either pro se or by an attorney of his own selection. If he does not intervene, his interests will be represented by the present plaintiffs and their attorneys.

This notice must remain in this cell until the suit has ended. Do not take it with you if you are transferred to another cell or if you leave the institution.

And it is further

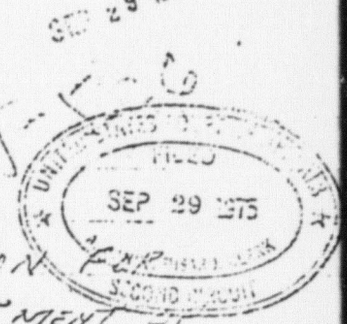
ORDERED, that the Legal Aid Society of Nassau County reproduce the necessary number of copies of the above notice and deliver them to the Warden of the Nassau County Jail for distribution; and it is further

ORDERED, that the Warden of the Nassau County Jail cause a copy of the above notice to be placed in each cell of the Nassau County Jail occupied by a pretrial detainee.

DATED: March 20, 1973

ORRIN G. JUDD
United States District Judge

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT



UNITED STATES OF AMERICA EX REL CHARLES JONES-BEY PRO-SE PLAINTIFF - AGAINST - RALPH CASO; COUNTY EXECUTIVE MICHAEL SENIUK; SHERIFF SAUL JACKSON; COMMISSIONER OF CORR. WALTER Elood; WARDEN.	MOTION FOR APPOINTMENT OF COUNSEL CIVIL NO. 75C-180

PLAINTIFF MOVE IN THIS COURT FOR AN ORDER APPOINTING JAMES S. CARROLL III ESQ., 2590 SEVENTH AVE; NEW YORK; NEW YORK; (212) 287-8507; A MEMBER OF THE NEW YORK BAR; TO REPRESENT ME CHARLES JONES-BEY BECAUSE I CANNOT TO EMPLOY AN ATTORNEY; THIS MOTION IS BASE ON PLAINTIFF AFFIDAVIT IN SUPPORT OF HIS MOTION FOR LEAVE TO PROCEED IN FORMA PAUPERIS AND FOR APPOINTMENT OF COUNSEL; LEGAL AUTHORITY FOR APPOINTMENT AND COMPENSATION OF COUNSEL IS 28 U.S.C. SEC. 1915(d) AND 18 U.S.C. SEC. 3006 A(9); AS INTERPRETED IN MCCLAIN V. MANSON; 343 F. SUPP 382(d) CONN. 1972)

PLAINTIFF HAVING THUS APPLIED TO THE U.S. DISTRICT COURT FOR LEAVE TO APPEAL FROM AN ORDER OF HON. JUSTICE ORRIN Judd (U.S.D.J.) dated JULY 17, 1975; dismissing - PLAINTIFF PRO. SE. ACTION AT LAW AS MOOT.

EX REL. JONES-BEY

PLAINTIFFS OF THE CLASS ACTION REPRESENTED IN DOMINICK PELMEE ET AL PLAINTIFFS V JAMES TAYLOR CULVER ET AL DEFENDANTS; 72C-1643, did NOT FAIRLY NOR ADEQUATELY PROTECT THE INTERESTS OF THE CLASS; NOR WERE THE CLASS AWARE OF THIS ACTION PENDING IN COURT PURSUANT TO F.R.P.C. 23(d)(2) NO NOTICE OF THIS ACTION HAS EVER BEEN PRESENTED TO THE JAIL POPULATION BETWEEN 8/22/74 AND 5/17/75 WHILE I WAS AWAITING TRIAL IN NASSAU COUNTY; THEREFORE I CHARLES JONES-BEY FEEL THAT I HAVE A LEGAL RIGHT TO BE COMPENSATED FOR INJURIES I,VE SUFFERED AND WILL CONTINUE TO SUFFERED AS LONG AS THIS COURT CONTINUE ALLOWING THE DEFEDANTS TO VIOLATE THE FREE NATIONAL RIGHTS OF CITIZENS OF THIS GOVERNMENT; CURRENTLY I CHARLES JONES-BEY AM BEING DETAINED UNLAWFULLY AS A RESULT OF THE ACT OF COLLUSSION ON THE BEHALF OF COURT OF NASSAU COUNTY WHO RAILROADED ME OF MY LIBERTY WITHOUT DUE PROCESS OF LAW; AND BE BEING UNTUTORED IN LAW HAVE FOUND NO REMEDY AT LAW TO CORRECT THE HARM IWHICH I AM NOW UNDERGOING; MY RIGHTS TO APPEAL MY CRIMINAL CONVICTION HAS BEEN ROBBED BY INADEQUACY OF COUNSEL.

September 18, 1975

Charles Jones-Bey 75A-1659
Box 149
Attica, New York 14011

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF NEW YORK

- -x

DOMINICK PALMA, ROBERT DUFF, EDWARD BURKE, HENRY BRITT and LEMAR WILLIAMS individually and on behalf of all other persons similarly situated

Plaintiffs

-against-

DOCKET NO. 72 C 1653

JAMES TREUCHTLINGER, Commissioner of Corrections for the County of Nassau, and WALTER J. FLOOD, Warden, Nassau County Jail, individually and in their official capacities

Defendants

- -x

- -x

INMATES OF THE NASSAU COUNTY JAIL

Plaintiffs

-vs-

DOCKET NO. 75 C 53

MICHAEL P. SENIUK - (Sheriff)

Defendant

- -x

NOTICE TO ALL ~~PERSONS~~ DETAINEES CONFINED IN THE NASSAU COUNTY JAIL

The United States District Court of the Eastern District of New York has determined that this action has been brought on behalf of all detainees incarcerated in the Nassau County Correctional Center.

The complaints have charged that the conditions of confinement for pre-trial detainees at the Nassau County Jail are violative of the First, Fifth, Sixth, Eighth and Fourteenth Amendments of the United States Constitution.

The suit sought a permanent injunction against the continuance of these conditions.

The Court has not determined whether or not the charges are true or whether or not the plaintiffs are entitled to any relief.

The issues raised by the plaintiffs' complaints have been resolved by the attached Consent Judgment entered into by the attorneys for plaintiffs and defendants. This consent decree will bind all detainees incarcerated at the Nassau County Correctional Center.

A hearing will be held on the 11th day of July, 1975 at 10:00 A.M.

at the United States Court House, 225 Cadman Plaza, Brooklyn, New York, before Judge Orrin Judd, at which time the Court will entertain any opposition to the attached Consent Judgment. Any member of the class who is opposed to the attached consent judgment should address his opposition and the basis for such opposition to the Court, before the above date.

Any member of the class who does not express his views concerning the attached Consent Judgment prior to July 11, 1975, will have his interests represented by the present plaintiffs and their attorneys.

Plaintiffs are represented by James J. McDonough, Attorney in Charge, Attorney for Plaintiffs, Legal Aid Society of Nassau County, Criminal Division, 400 County Seat Drive, Mineola, New York (516) 248-5782

Harry D. Hersh and Matthew Muraskin, of counsel.

Form of notice approved.
June 6, 1975

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF NEW YORK

M'FILMED

FILED
IN CLERK'S OFFICE
U. S. DISTRICT COURT E.D. N.Y.
JUL 11 1975
TIME A.M.....
P.M.....

DOMINICK PALMA, ROBERT DUFF, EDWARD BURKE, HENRY BRITT and LEMAR WILLIAMS individually and on behalf of all other persons similarly situated

Plaintiffs

-against-

JAMES TREUCHTLINGER, Commissioner of Corrections for the County of Nassau and WALTER J. FLOOD, Warden, Nassau County Jail, individually and in their official capacities

Defendants

DOCKET NO. 72 C 1653

CONSENT JUDGMENT

INMATES OF THE NASSAU COUNTY JAIL

Plaintiffs

-vs-

MICHAEL P. SENIUK - (Sheriff)

Defendant

DOCKET NO. 75 C 53

IT IS HEREBY CONSENTED AND AGREED by and between the attorneys for the plaintiffs and defendants in the above-entitled action that the issues raised in the plaintiffs' complaints have been resolved in the following manner:

1. The defendants will permit changes in the visiting list every seven (7) days at the Nassau County Correctional Center.

2. The defendants will permit all detainees at the Nassau County Correctional Center to receive visits on a contact basis, with the exception of those detainees who will present inordinate security risks should they be afforded contact visits.

3. By July 11, 1975 the defendants will establish a reasonable classification system for the purpose of implementing paragraph 2.

4. The defendants will permit detainees at the Nassau County Correctional Center to receive visitors under the age of sixteen (16). Such visitors must be accompanied by an adult.

5. The defendants will continue to inspect the mails for contraband, but it will remain the continuing practice and policy of the defendants not to censor or otherwise interfere with the flow of mail to and from detainees at the Nassau County Correctional Center.

6. Legal mail, i.e., to attorneys, judges, public officials and law enforcement agencies, will be handled by the defendants in the following manner:

Outgoing legal mail will be inspected for contraband but not read, by a correctional officer, in the presence of the inmate. It will then be immediately sealed, collected and mailed, unopened, in the regular manner.

Incoming legal mail will be delivered to the inmate addressee unopened. It will then be opened in the presence of an officer who will inspect the contents for contraband without reading the letter.

7. The defendants will permit detainees to subscribe to magazines directly from the publishers. This privilege shall be conditioned upon a signed consent, by the detainee, to absolve and hold harmless the defendants from any responsibility for not receiving such periodicals after his release or transfer from the institution.

8. Defendants may prescribe rules reasonably restricting the number of magazines permitted to be kept in a cell.

9. More magazines will be added to the collection in the library at the Nassau County Correctional Center.

10. A Daily News and a New York Times will be delivered daily to each floor at the Nassau County Correctional Center and attempts will be made by the defendants to obtain additional Newsdays for distribution.

11. The present regulation at the Nassau County Correctional Center which permits detainees to make one, three minute phone call, per week will be amended to permit detainees to make two, three minute phone calls, per week or, in the alternative, one phone call for a six minute period per week.

12. Defendants make a committment that in September of 1975, when more space will be made available, earnest attempts will be made to further extend the phone call privilege.

13. The defendants will continue to afford daily outside exercise to detainees, when weather permits.

14. The defendants commit themselves to an earnest effort to obtain LEAA funds to build an indoor gym.

15. All anal searches prior to transporting detainees to court have been discontinued.

16. The defendants will continue to transport detainees to and from the courts, and shall continue to detain them therein, under humane conditions and apply only necessary security measures.

17. Detainees who are handcuffed during their initial entrance into a courtroom shall be permitted to approach the court, when their case is called, free of handcuffs. This procedure will not be followed when a particular court orders otherwise or the officer in charge believes security dictates otherwise.

18. Defendants will recognize bona fide changes in religion designations and will permit detainees to attend the

bona fide services of their faith at the institution, if same can be provided. The Nassau County Correctional Center retains all rights of security.

19. Defendants will place no restrictions on the hair length, beards or moustaches of detainees.

20. The defendants will continue to work diligently to avoid any excessive and unreasonable delay in supplying medical services to all inmates incarcerated at the Nassau County Correctional Center.

21. At the present time the defendants have three medical doctors and one dentist, who work five days a week and are on call weekends. Furthermore, the defendants employ four medical attendants, five regular nurses, three correction officers and two I/C correction officers working in the Medical Unit with rotating schedules seven days a week.

22. All inmates upon admission to the Nassau County Correctional Center are questioned as to their physical conditions. At this time if an inmate complains of a serious medical problem he is sent to the Medical Department for immediate attention. If there is no physician on duty, he is then transported to the Nassau County Medical Center, which adjoins the Correctional Center. All inmates who are admitted to the Nassau County Correctional Center receive a physical examination within 24 to 36 hours. If an inmate is received late Saturday afternoon, unless he complains of s physical ailment, he will not see the doctor until Monday morning. If during this period of time the inmate becomes ill, in the absence of a doctor, the nurse, medical attendant or tour commander may transport the inmate to the Nassau County Medical Center for an evaluation.

23. It is the Correctional Center's policy to have a medical doctor evaluate all eye ailments. If in his estimation it is an emergency condition, the defendants will transport the

inmate to the Nassau County Medical Center Eye Clinic for an examination.

24. The defendants are currently in the process of making the necessary arrangements to have an ~~ophthamologist~~ optometrist come into the Correctional Center bi-weekly and conduct eye examinations on the premises.

25. If an inmate requires dentures because of massive extractions or gum diseases, and providing the inmate will be at the Correctional Center ~~30~~ 90 days or more to complete the work, the defendants will supply these dentures as an expense to the county.

26. Sick call program: The Medical Unit calls all the floors Monday through Saturday and asks the floor officer for all inmates who have requested to see the doctor. On Sunday the nurses or tour commander visits the floor if an inmate claims he is ill. If there is any reason to believe that the inmate is ill, he is sent to the Nassau County Medical Center for an evaluation.

27. No guard or correctional officer draws blood from inmates for laboratory testing. Blood tests are taken by qualified medical attendants.

28. There is no psychiatrist on the Correctional Center's staff. There is an Observation Tier which is observed 24 hours a day. If any inmate shows signs of being irrational, he is sent to the Nassau County Medical Center Psychiatric Ward for a psychiatric evaluation. Court ordered psychiatric evaluations are usually completed within 7 working days.

29. The defendant will supply special medical diets, as soon as possible to detainees who require such diets.

30. The defendants are in the process of developing plans to further improve the medical and psychological services and facilities at the Correction Center.

31. The defendants have a responsible and humane shake-

down policy detailed in Warden's Order, Number 2, issued by Warden Walter J. Flood of the Nassau County Correctional Center on June 14, 1974.

32. The defendants supply a change of clothes to each inmate, once a week and more frequently when necessary.

33. Shower floors at the Correctional Center will be treated or mats will be added, to avoid slippage.

34. All of the above rules and regulations, which are not the current practices of the defendants, will be implemented by July 11, 1975.

35. Inmates will be informed in writing of all of the above rights and regulations.

James J. McDonough
by Matthew Muraca

JAMES J. McDONOUGH
Attorney for Plaintiffs
Attorney in Charge
Legal Aid Society of
Nassau County, N.Y.
Criminal Division
400 County Seat Drive
Mineola, New York

John F. O'Shaughnessy, Nassau County Attorney
By Jack Olchin, Deputy County Attorney

JOHN F. O'SHAUGHNESSY
Attorney for Defendants
County Attorney, Nassau County
Executive Building, 1 West Street
Mineola, New York

DATED: Brooklyn, New York
July ~~June~~ 11, 1975

SO ORDERED

Orin J. Judd

ORIN JUDD
U.S.D.J.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

DOMINICK PALMA, et al.,

Plaintiffs,

- against -

JAMES TREUCHLINGER, etc., et al.,

Defendants.

72-C-1653

July 15, 1975

Appearances:

JAMES J. McDONOUGH, ESQ.
Attorney-in-Charge, Criminal Division
Legal Aid Society of Nassau County
Attorney for Plaintiffs

By: MATTHEW MURASKIN, ESQ.
HARRY D. HERSH, ESQ.
of Counsel

JOHN F. O'SHAUGHNESSY, ESQ.
County Attorney of Nassau County
Attorney for Defendants

By: JACK OLCHIN, ESQ.
Assistant County Attorney
of Counsel

J U D D, J.

MEMORANDUM

At a hearing held on July 11, 1975 for the approval of a proposed settlement of the issues in this civil rights action on behalf of detainees at the Nassau County Jail, no one appeared in opposition to the settlement. Plaintiffs'

FPI—88—3-17-72—30M—9153

counsel and the court had received two letters from inmates, one from Ralph M. Valvano and one from Anthony Franciotti. Both letters asserted that there should be more liberal provisions for visitation, correspondence, reading material, use of telephone, and other conditions of confinement.

The proposed settlement represents the fruits of many months' effort by counsel on both sides, and will result in a significant improvement over conditions that existed when the action began. If the settlement were disapproved and the case went to trial, the court might grant relief which is more favorable to the plaintiffs in some respects, but it might also refuse to grant some of the relief that has been agreed upon. Moreover, a resolution of issues which has the support of the officials responsible for the conduct of the Nassau County Jail has the assurance of prompt implementation and good faith efforts to make it work. The 30 or more provisions of the settlement agreement are already being put into effect in part, and will be promptly implemented, except for the increased number of telephone calls which should be effective by August 1, 1975, and the face-to-face visitation provision. The latter requires hiring of additional Correction Officers and purchase of new equipment as well as construction work in connection with the removal of certain glass partitions. The court approved a November 11 target date for the completion of this work, with the understanding that the

FPI—SS—3-17-72—30M—9153

the face-to-face visits will be provided earlier, if necessary preparations can be expedited.

The court has therefore determined that the settlement is in the best interests of the class represented by the plaintiffs, and has signed the stipulation of settlement which was executed by both parties.

The settlement disposes also of the issues in Maccaroni v. Michael P. Seniuk, 75-C-111, Charles Jones-Bey v. Ralph G. Caso, et al., 75-C-180, and George Garrett, Jr. v. Sheriff of Nassau County, 75-C-64, other actions by members of the same class. Orders dismissing those actions will be executed.

U. S. D. J.

COPY RECEIVED THIS

24 DAY OF Mar 1936

JOHN F. O'SHAUGHNESSY

County Attorney, Nassau County

By N. B. McAlonan

~~Deputy County Attorney~~